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AUG 16 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WYED(TV), Goldsboro, NC

Dear Alan:

The purpose of this letter is to request expedited consideration of the Petition for Rulemaking filed March 9, 1993, by Group H Broadcasting Corporation. The Petition requests the amendment of Section 76.51 of the Rules to change the designation of the "Raleigh-Durham, North Carolina" market to "Raleigh-Durham-Goldsboro, North Carolina." We assisted Group H in preparing this Petition.

In light of the new must-carry rules, the redesignation of the Raleigh-Durham market to include Goldsboro is of considerable importance to Group H. One cable operator has already informed WYED that carriage of the station pursuant to the must-carry rules on that operator's cable systems in the Raleigh-Durham area alone will cost WYED about \$100,000 a year. The reason is that although Station WYED is generally eligible for must-carry throughout the Raleigh-Durham ADI under the new must-carry rules, cable systems in the Raleigh-Durham ADI are not required to carry WYED anywhere that it is considered a "distant" signal for copyright purposes, unless WYED agrees to indemnify the systems for any additional copyright liability incurred.

Under copyright law, a station is generally considered "local" on cable systems located within the station's "35-mile zone." If the Commission adds Goldsboro to the hyphenated Raleigh-Durham designation under Section 76.51, WYED's "35-mile

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April 19, 1993

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zone" will become co-extensive with the "35-mile zone" of its competitors in the market, which are licensed to Raleigh or Durham, and WYED will be considered a "local" signal for copyright purposes in the Raleigh-Durham area. (From a signal standpoint, it is already local in this area. As shown in the Petition, WYED places a city-grade signal over all of Raleigh and virtually all of Durham. Indeed, WYED's city-grade contour is virtually identical to the city-grade contour of WTVD-TV, which is licensed to Durham.)

Some urgency attaches to the Petition because copyright liability is determined every 6 months under the U.S. Copyright Office's regulations. The liability for carriage of WYED on cable systems in the Raleigh-Durham area 35-mile zone alone will exceed \$47,000 for the first six months of 1993. This liability will be eliminated prospectively only upon the FCC's redesignation of the market as requested in the Petition. The Copyright Office will not adjust copyright fees retroactively. Therefore, it is of utmost importance to WYED that the Commission act on the Petition as expeditiously as possible.

Group H's Petition and this request are consistent with the Commission's Report and Order released March 29, 1993, which adopted the new must-carry and retransmission consent rules. In the Report and Order, the Commission decided not to make a wholesale revision of the existing list of top 100 television markets and their designated communities in Section 76.51, but to continue to revise the list on a case-by-case basis. Report and Order at ¶50.

The Commission did, however, adopt some important procedural changes in the Report and Order. First, it stated that requests would be considered on an expedited rulemaking procedure, whereby the Commission would issue a notice of proposed rulemaking based on a submitted petition without first seeking public comment. Second, the Commission delegated authority to act on such petitions to the Chief of the Mass Media Bureau. The Commission stated that it expected that such requests would be routinely docketed and issued as rulemaking proposals. Report and Order at n. 150.

Finally, Group H's Petition to add Goldsboro to the Raleigh-Durham market is consistent with the Commission's redesignation of three markets in the Report and Order. There, the Commission added Rome, Georgia to the Atlanta television

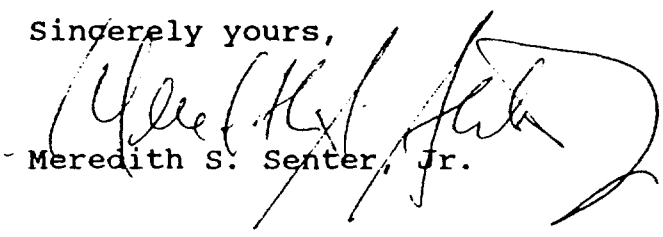
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April 19, 1993
Page - 3 -

market; Chillicothe to the Columbus, Ohio market; and New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut market. Group H's Petition contains similar evidence that Goldsboro is part of the already hyphenated Raleigh-Durham market.

Accordingly, I would appreciate your assistance in expediting the issuance of a Notice of Proposed Rulemaking in this matter. Please feel free to call if you have any questions.

Sincerely yours,


Meredith S. Senter, Jr.

MSS/cml
Enclosure

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED
MAR - 9 1993

In the Matter of)
)
Amendment of Section 76.51)
of the Commission's Rules to)
Include Goldsboro, North)
Carolina in the Market Currently)
Designated as the "Raleigh-Durham")
Television Market)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 93-212
RM - _____

To: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

Group H Broadcasting Corporation ("Group H"), licensee of television station WYED, Channel 17, Goldsboro, North Carolina, respectfully requests that the Commission commence a rulemaking proceeding to amend Section 76.51 of the FCC's Rules, 47 C.F.R. § 76.51, to change the designation of the "Raleigh-Durham, North Carolina" major television market to "Raleigh-Durham-Goldsboro, North Carolina." This action is necessary in order to align the FCC's major market television rules with the reality of the television market currently designated "Raleigh-Durham, North Carolina." The adoption of a Raleigh-Durham-Goldsboro market designation will facilitate equal competition among the stations in terms of cable television carriage and syndicated exclusivity, and cable subscribers will be assured access to all stations in the market.

**I. GOLDSBORO IS PART OF THE
RALEIGH-DURHAM TELEVISION MARKET.**

For purposes of the Table of Major Television Markets found at Section 76.51 of the Rules, a "hyphenated market" is a television market that contains more than one major population center supporting all stations in the market and with competing stations licensed to different cities within the market area. Cable Television Report and Order, 36 F.C.C.2d 143, 176 (1972). As demonstrated below, Goldsboro should be included in the Raleigh-Durham market under this definition.

Goldsboro is located approximately 51 miles southeast of Raleigh, North Carolina. The three cities are connected by U.S. Highway 70, a major transportation artery.

The transmitter sites for four of the five stations licensed to Raleigh, Durham and Goldsboro are located in close proximity just off Highway 70 between Raleigh and Goldsboro. The transmitter site for station WYED, which is licensed to Goldsboro, is located less than 7 miles from the transmitters of three television stations licensed to Raleigh or Durham, WTVD, WRAL-TV and WRDC-TV, and within 21 miles of the transmitter of the fourth station WLFL-TV.^{1/}

^{1/} The proximity of the WYED transmitter site to the other Raleigh-Durham stations' sites is illustrated by a comparison of the stations' respective latitudinal and longitudinal coordinates below:

(continued...)

The Raleigh, Durham and Goldsboro stations serve substantially the same areas. A comparison of the Raleigh-Durham stations' signal coverage maps reveals that WYED's signal covers nearly all of the areas served by WTVD, WRAL-TV, WLFL-TV and WRDC-TV. See Exhibits 1 and 2. Station WYED places a predicted City Grade signal contour over Raleigh and substantially all of Durham, places a Grade A signal over both Raleigh and Durham, and places a Grade B signal over a majority of the Raleigh-Durham television market. See Exhibit 1. Raleigh-Durham Stations WTVD, WRAL-TV and WRDC-TV place a Grade A or better signal over Goldsboro, and the fourth Raleigh-Durham station, WLFL-TV, places a Grade B signal over Goldsboro. See Exhibit 2.

Rating services include Goldsboro in the Raleigh-Durham market. For example, Arbitron includes Goldsboro in the same Raleigh-Durham Area of Dominant Influence ("ADI").

Other media also treat Raleigh, Durham and Goldsboro as one television market. The cable system serving Goldsboro carries the four network affiliate

^{1/}(...continued)

WYED:	35°	37'	01"
	78°	28'	38"
WTVD:	35°	40'	05"
	78°	31'	58"
WRAL-TV:	35°	40'	35"
	78°	32'	09"
WLFL-TV:	35°	42'	51.5"
	78°	49'	00.5"
WRDC-TV:	35°	40'	35"
	78°	32'	09"

See also Exhibits 1 and 2.

stations licensed to Raleigh and Durham, and the Raleigh-Durham cable systems carry station WYED. Television & Cable Factbook, Cable Vol. D-1161 (1992). Finally, the Raleigh and Durham newspapers include Goldsboro station WYED in the television station listings for the Raleigh-Durham area.

Thus, viewers, advertisers, and the television ratings services all treat Goldsboro as part of the Raleigh-Durham television market. Given that WYED serves the same area as the Raleigh-Durham stations, WYED inevitably competes for audience and advertising dollars with the Raleigh-Durham stations.

**II. THE ORIGINAL RALEIGH-DURHAM DESIGNATION
WAS BASED ON ARBITRON RANKINGS MADE
BEFORE WYED COMMENCED OPERATIONS.**

The Commission adopted Section 76.51 on February 3, 1972. Cable Television Report and Order, 36 F.C.C.2d 143 (1972). Station WYED commenced operations on April 11, 1988. Accordingly, when the Commission adopted the Table of Major Television Markets, Goldsboro was not combined with Raleigh and Durham to form a hyphenated market because no television station was operating in Goldsboro at the time. Therefore, while there may have been a basis for omitting Goldsboro at the time of the adoption of the rule, circumstances have changed, and the current market designation places WYED at a competitive disadvantage vis-a-vis the other Raleigh-Durham stations.

The Commission has acknowledged that the major television market list in Section 76.51 is not wholly reflective of the current television marketplace.

Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-259, FCC 92-499, at 12 (released Nov. 19, 1992). For instance, due to market growth and population shifts, 14 markets in the Arbitron top 100 ADI market list used to create Section 76.51 are no longer ranked in the top 100 markets. In addition, of the markets that appear on both lists, the designated communities of 23 markets differ between the two lists. Id. Market rankings within the list have also changed significantly. For example, Section 76.51 ranks Raleigh-Durham as the major television market number 73, while Arbitron ranks the Raleigh-Durham market as number 34. Television & Cable Factbook, Station Vol., at A-1 (1992). In addition, Arbitron includes WYED on its list of stations serving the Raleigh-Durham market. Id.

**III. THE RALEIGH-DURHAM MARKET DESIGNATION
RESULTS IN AN INEQUITABLE APPLICATION
COPYRIGHT COMPULSORY LICENSE SCHEME TO WYED.**

Because WYED is not currently included in the Raleigh-Durham market designation under Section 76.51, WYED is not considered a "local" signal for copyright purposes on all cable systems in the Raleigh-Durham area.

Notwithstanding that WYED serves substantially the same audience as the Raleigh-Durham stations, WYED has been

forced to commission individual "significantly-viewed" studies for each cable community in the market in order to obtain carriage status equal to that afforded to its competitors licensed to Raleigh and Durham. For a relatively new station like WYED, the prospect of commissioning numerous "significantly-viewed" studies is cost-prohibitive. In the absence of such studies, however, cable operators are understandably reluctant to carry WYED due to the risk of copyright liability.

Thus, WYED is at a competitive disadvantage against other stations in the Raleigh-Durham market because its community of license is not included in the market designation under Section 76.51. This inequitable application of the copyright compulsory license rules is especially disturbing in light of the proximity of WYED's transmitter to the transmitters of the stations licensed to Raleigh and Durham and the substantial similarity between the stations' signal contours.

**IV. THE CABLE TELEVISION CONSUMER PROTECTION
AND COMPETITION ACT OF 1992 REQUIRES THE
COMMISSION TO IMPLEMENT REVISIONS TO
UPDATE SECTION 76.51.**

Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992") requires the Commission to issue regulations revising Section 76.51 within 180 days as part of the implementation of the must-carry provisions included in the act. Cable

Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (to be codified at 47 U.S.C. § 614(f)). Pursuant to this mandate, the Commission has commenced a rule making to implement these and other changes required by the Cable Act of 1992. Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-259, FCC 92-499, at 12 (released Nov. 19, 1992). Furthermore, in light of the mandate contained in Section 4 of the Cable Act of 1992, the Commission has stated that it may consider ad hoc revisions to the list through individual rule making notices. Id.

**V. GOLDSBORO MEETS THE CRITERIA FOR INCLUSION
IN THE RALEIGH-DURHAM TELEVISION MARKET.**

In determining whether to add a community to an existing television market designation, the Commission considers four factors: (1) the distance between the proposed community and existing designated communities; (2) whether a station would be afforded expanded cable carriage rights beyond its Grade B contour; (3) the presence of a clear showing of particularized need by a station requesting a change of designation; and (4) an indication of benefit to the public from the proposed change. Request by TV 14, Inc. to Amend Section 76.51, MM Docket No. 92-295, FCC 92-536, at 3 (released Dec. 8, 1992) (citing Amendment of § 76.51, Major Television Markets (Fresno-Visalia, California), 57 R.R.2d 1122, 1124 (1985)).

Goldsboro meets the above criteria for inclusion in the Raleigh-Durham market. As previously mentioned, Goldsboro is located only 51 miles from Raleigh, North Carolina. Goldsboro Station WYED's transmitter site is located within 7 miles of the transmitters of three Raleigh-Durham stations and within 21 miles of the transmitter of another Raleigh station. Furthermore, WYED's Grade B contour substantially overlaps with the Grade B contours of its four competitors in the Raleigh-Durham market that are currently afforded cable carriage status as a "local" signal. See Exhibits 1 and 2.

Additionally, inclusion in the Raleigh-Durham television market is essential to the continued viability of WYED. At present, WYED is substantially disadvantaged vis-a-vis its competitors in the Raleigh-Durham market due to the inequitable application of the copyright compulsory license rules.^{2/} WYED's disadvantage is exacerbated by the fact that program syndicators charge WYED Raleigh-Durham market rates for programming. The grant of requested relief will correct this anomaly and is consistent with the goal of assisting the survival and growth of "overshadowed" stations like WYED.

^{2/} Under the Cable Act of 1992, a commercial television station will be entitled to elect "must-carry" throughout its ADI. Thus, the Commission's inclusion of Goldsboro in the Raleigh-Durham will have no direct effect on WYED's must-carry rights, although it may affect whether WYED is considered local or distant for copyright purposes.

Finally, WYED provides a diverse voice in the Raleigh-Durham television market. Unlike stations currently licensed to Raleigh or Durham, WYED is not affiliated with a major television network. As such, WYED provides Raleigh-Durham viewers with an alternative voice and syndicated programming not currently available on the network affiliates. A change in the Raleigh-Durham market designation to Raleigh-Durham-Goldsboro will allow cable subscribers to receive WYED without subjecting WYED to the cost-prohibitive alternative of commissioning "significantly viewed" studies. Hence, the amendment of Section 76.51 is the most expeditious means of affording much-deserved relief to WYED.

VI. CONCLUSION

Hyphenated market designations under Section 76.51 were intended to cover situations where stations licensed to different cities in fact serve and compete in the same market. The purpose of a hyphenated designation is "to help equalize competition between stations in markets of this type, and to assure that stations [would] have access to cable subscribers in the market and that cable subscribers [would] have access to all stations in the market." Cable Television Report and Order, 36 F.C.C.2d at 176 (1972).

The present television marketplace in the Raleigh-Durham-Goldsboro area is precisely the situation intended to be covered by a hyphenated market designation. The

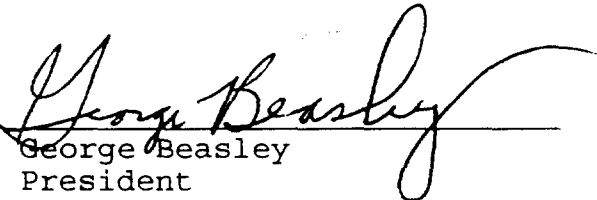
television industry recognizes Goldsboro as part of the Raleigh-Durham market, WYED places city grade signal over Raleigh and substantially all of Durham, WYED is included in the television listings for the Raleigh-Durham area, and all stations in the market draw advertisers and viewers from all three cities in the market.

WHEREFORE, Group H Broadcasting Corporation respectfully requests the Commission to amend Section 76.51 of its Rules to designate the Raleigh-Durham television market as "Raleigh-Durham-Goldsboro."

Respectfully submitted,

GROUP H BROADCASTING CORPORATION

By:



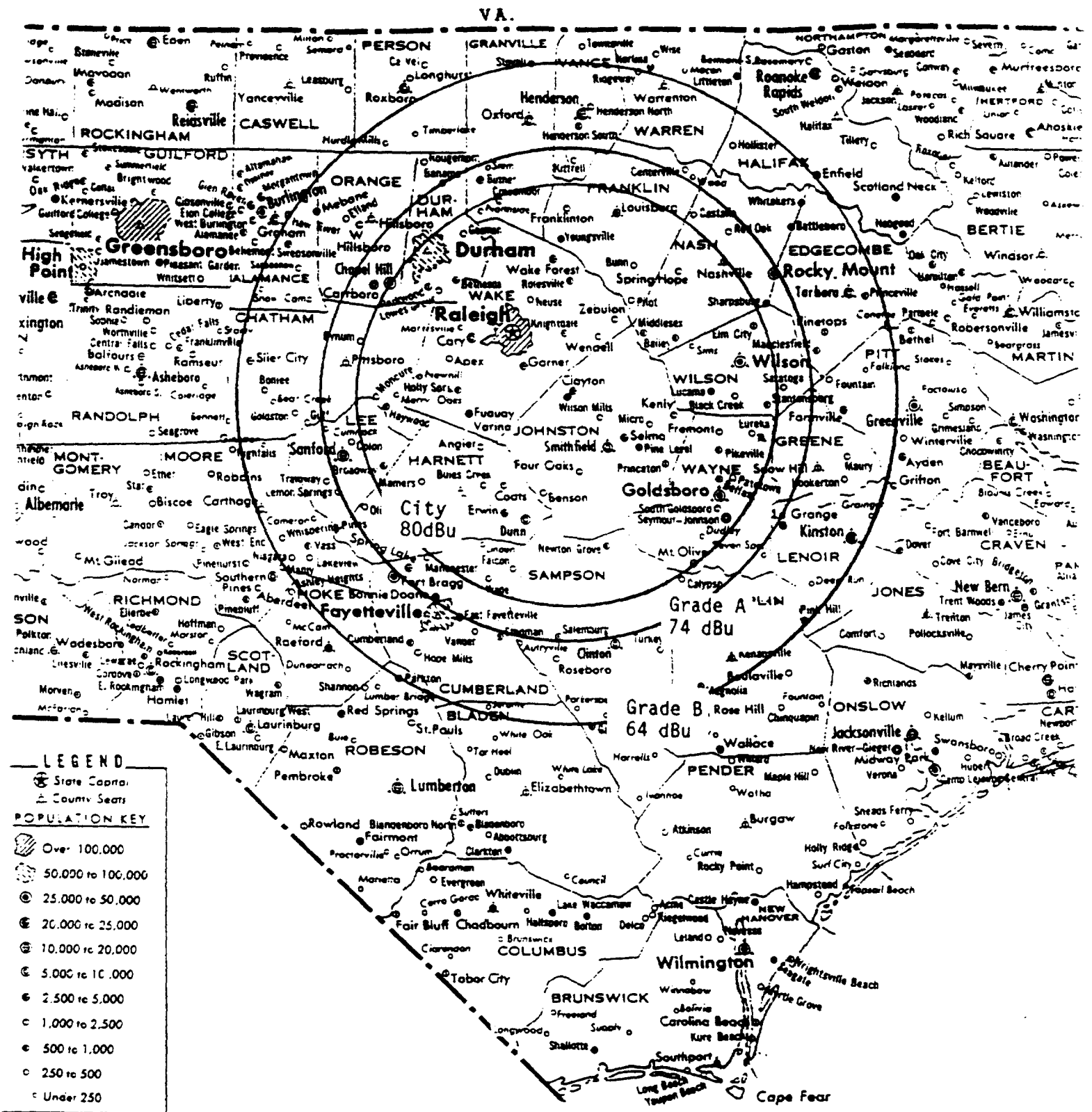
George Beasley
President
Group H Broadcasting Corp.
3033 Riviera Drive
Suite 200
Naples, FL 33940
(813) 263-5000

February 28th 1993

EXHIBIT 1

WYED - GOLDSBORO

SIGNAL COVERAGE



FIELD STRENGTH CONTOURS FOR WYED-TV Goldsboro, NC.
Determined using 47 CFR 73.683.

COUNTY-TOWN NORTH CAROLINA

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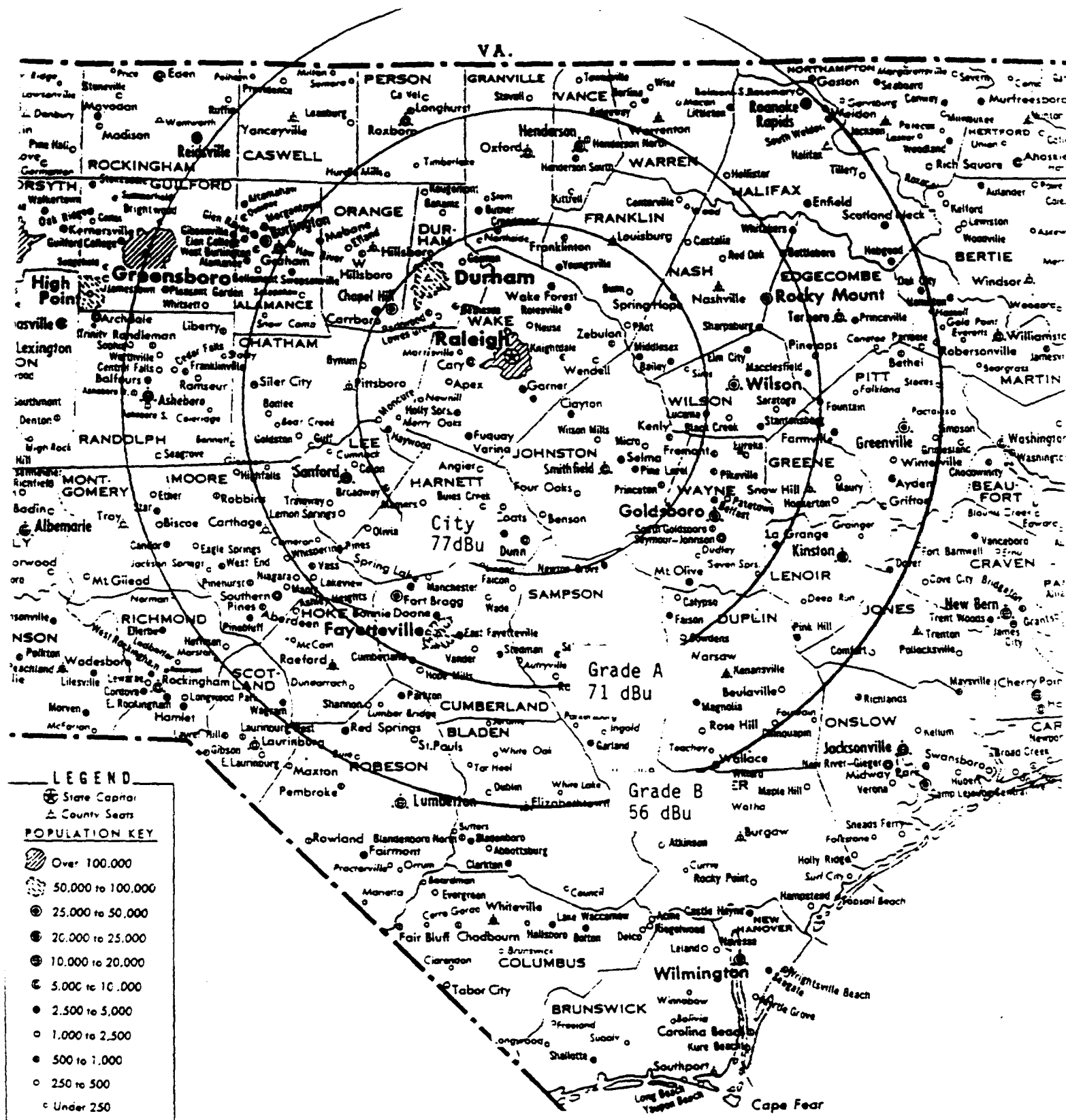
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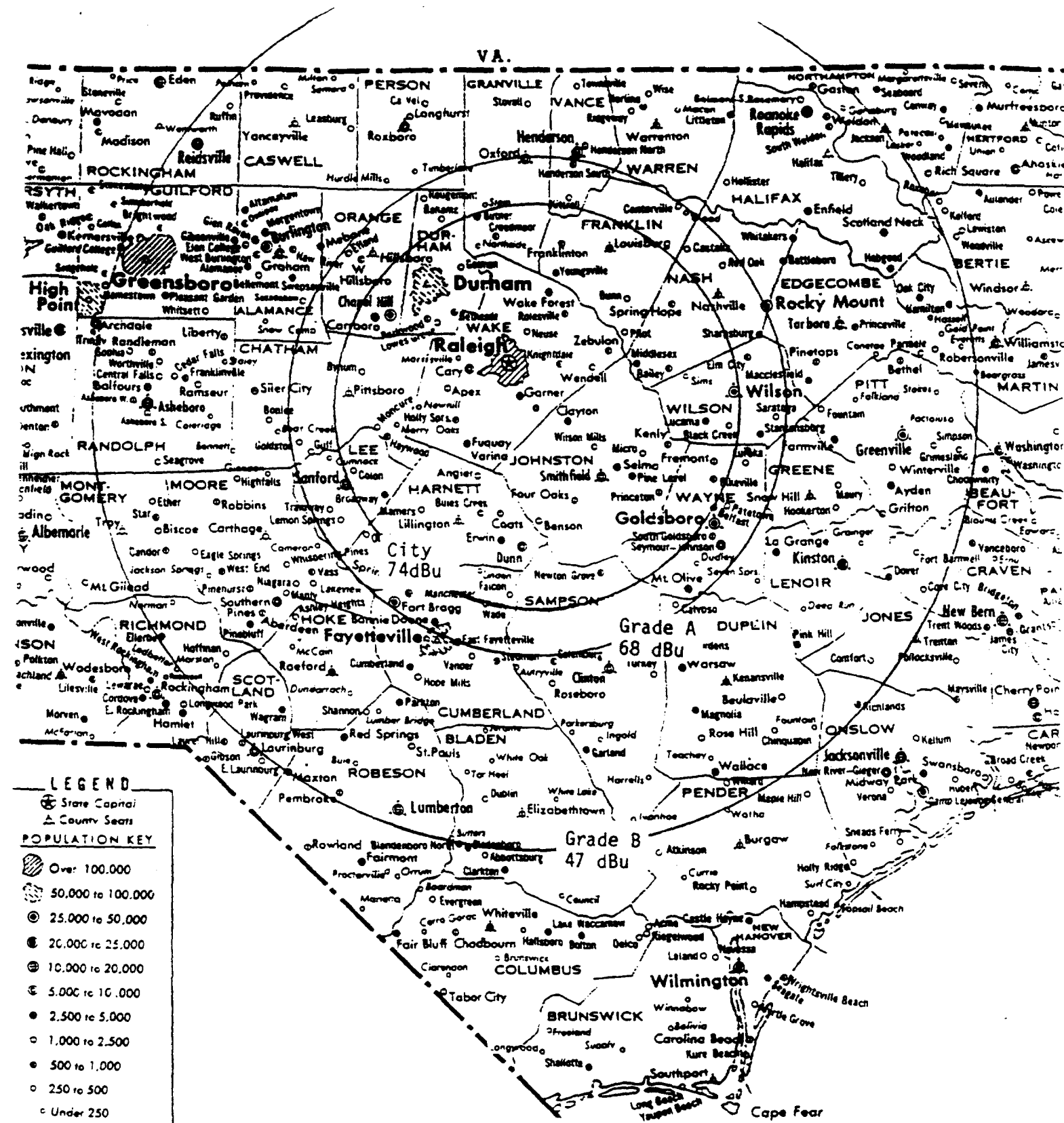
EXHIBIT 2

RALEIGH-DURHAM AREA

SIGNAL COVERAGE MAPS

WTVD - Durham
WRAL-TV - Raleigh
WRDC-TV - Durham
WLFL-TV - Raleigh





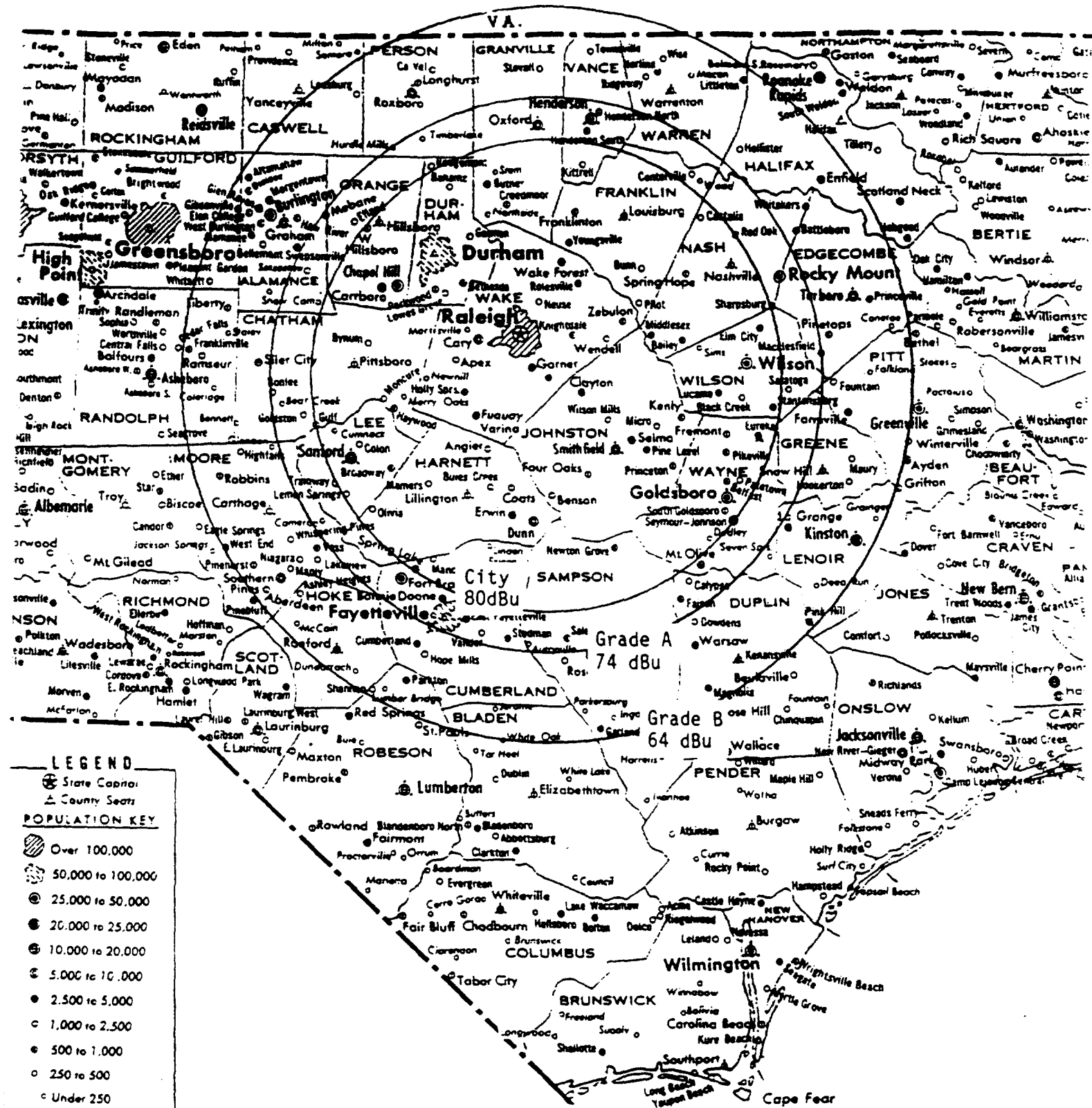
FIELD STRENGTH CONTOURS FOR WRAL-TV Raleigh, NC.
Determined using 47 CFR 73.683.

COUNTY-TOWN NORTH CAROLINA

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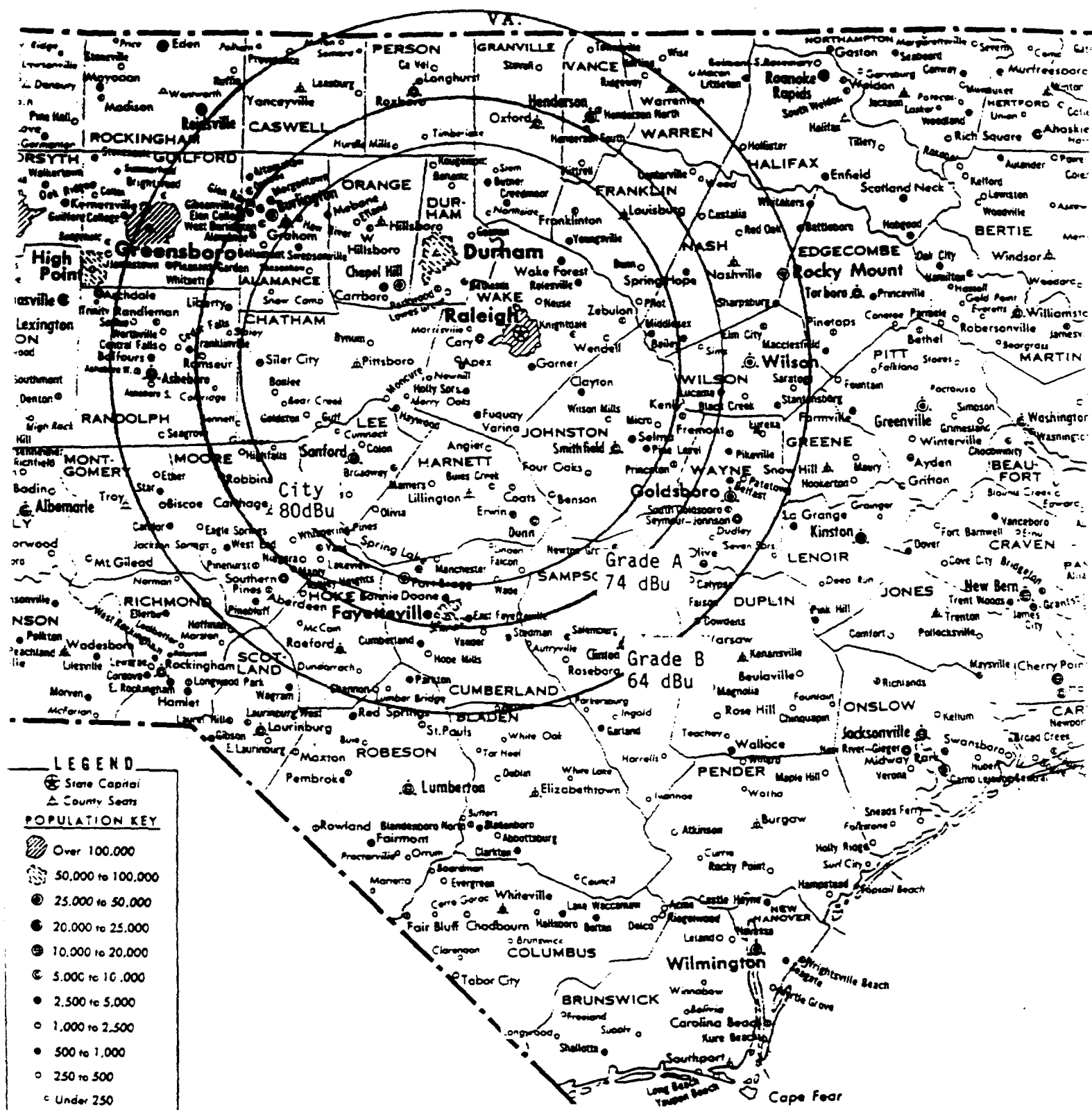
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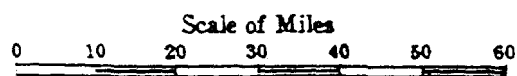
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FIELD STRENGTH CONTOURS FOR WLFL-TV Raleigh, NC.
Determined using 47 CFR 73.683.

COUNTY-TOWN NORTH CAROLINA



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